IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7729 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOTILAL L KABRA

Versus

ASST COMMISSIONER OF INCOME TAX

Appearance:

1. Special Civil Application No. 7729 of 2002
MR JP SHAH for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1-2

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.L.DAVE

Date of decision: 24/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. Rule. The learned counsel appearing for the respondents waives service of the Rule. At the request of both the sides, the matter is heard finally.

2. The petitioner has challenged the orders made by the respondents under Section 220(2) of the Income Tax Act, copies of which are at Annexures `D1' dated 3.10.2000 and `D2' dated 13.12.2000 of the petition.

3. As per the order dated 3.10.2000, interest chargeable under Section 220(2) upto the date of drawing of the Recovery Certificate was worked out at Rs.13,29,898/- on the ground that income-tax payable under the order of the Settlement Commission made under Section 245D(4) of the Act was not paid in time. In the order dated 13.12.2000, the Tax Recovery Officer had worked out the total interest under Section 220(2) at Rs.17,51,239/- in addition to the interest already charged by the Assessing Officer. The grievance of the petitioner was that the Settlement Commission had extended the time for payment of the amount of tax determined under the order dated 31.1.1996 upto 31.7.1998 by order dated 5.5.1998 and, therefore, no interest was payable for that period. According to the Revenue, interest was payable on the amount determined by the Settlement Commission under the provisions of Section 245 D(6A) of the Act.

4. The stand that interest was mandatorily payable under Section 245D(6A) of the Act has been taken up by the Revenue in its affidavit filed on 26.2.2003 in the present proceedings. The interest which was worked out in the impugned orders was worked out not under the provisions of Section 245D(6A) but was worked out in context of the provisions of Section 220(2) of the Act as mentioned in those orders. It appears that during the pendency of the present petition the Income Tax Officer has, in the communication dated 24.2.2003, referring to the order made by the Settlement Commission under Section 245D(4) on 27.11.1995 and the order of the Assistant Commissioner of Income Tax dated 31.1.1996 determining the total amount as per the said order, worked out interest under Section 245D(6A) at Rs.25,82,709/- and the petitioner has been asked to pay the amount. It would, thus, appear that the respondent-authorities have shifted their stand from the provisions of Section 220(2) of the Act to the provisions of Section 245D(6A) of the Act for the purpose of recovering interest, which according to them, is due on account of the non-payment of the amount

determined by the Settlement Commission.

5. By order dated 5.5.1998, the Settlement Commission directed the petitioner to clear the entire liability by 31.7.1998. Under Section 245D(6A) of the Act, where any tax payable in pursuance of an order under sub-section (4) is not paid by the assessee within thirty-five days of the receipt of a copy of the order by him, then, whether or not the Settlement Commission has extended the time for payment of such tax or has allowed payment thereof by installments, the assessee shall be liable to pay simple interest at fifteen per cent per annum on the amount remaining unpaid from the date of the expiry of the period of thirty-five days. Thus, there is a specific provision made for charging interest in cases where the tax payable pursuant to the order of Settlement Commission made under Section 245D(4) of the Act has not been paid. In view of this specific provision, the earlier resort to the provisions of Section 220(2) for the purpose of working out interest in context of the non-payment of tax payable in pursuance of the order made under Section 245D(4) was misconceived and it appears that the Department has rightly changed its course from Section 220(2) to Section 245 D(6A) for the purpose of considering the question of payment of interest in context of the tax payable pursuant to the order made under Section 245D(4) of the Act. Therefore, the impugned orders dated 3.10.2000 at Annexure `D1' and 13.12.2000 at Annexure `D2' cannot be sustained. Both these orders are, therefore, liable to be set aside without prejudice to the power of the respondents to compute and recover interest under Section 245 D(6A) of the Act.

6. Since the order dated 24.2.2003 which is placed on record with the affidavit-in-reply of the respondents demanding interest from the petitioner has been made during the pendency of the petition, the petitioner has not responded to it within seven days as was required under the said communication. It is stated by the learned counsel for the petitioner that the petitioner will now respond to that communication within two weeks from today, including on the aspect of liability of the petitioner to pay any such interest. The learned counsel for the Revenue states that on the petitioner's responding to that letter dated 24.2.2003, the concerned authority shall consider the contentions that may be raised by the petitioner and take a decision in accordance with law within four weeks from the date of the receipt of the reply by the petitioner.

7. For the above reasons, the impugned orders at Annexures `D1' and `D2' are hereby set aside and the respondent-authorities are directed to take a fresh decision in the matter in accordance with law after the petitioner responds to the communication dated 24.2.2003. Such decision will be taken expeditiously preferably within four weeks from the date of receipt of the reply of the petitioner.

Rule is made absolute accordingly with no order as to costs.

(R.K. ABICHANDANI, J)

(A.L. DAVE, J)
zgs/-